

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No 904, 905 & 906 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SHANKERBHAI MOTIBHAI PATEL

Versus

SPL. LAND ACQ. OFFICER

Appearance:

MR AJ PATEL for Petitioner
Mr S S Patel for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE D.P.BUCH

Date of decision: 20/04/2000

C.A.V. (COMMON) JUDGEMENT (per Buch, J.)

The appellants, being the original claimants and

property owners in Land Acquisition Reference Nos. 655, 656 and 657 of 1988 respectively, have preferred these First Appeals under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'), challenging the common judgment and award passed by the learned third Joint District Judge, Mehsana on 28.7.1994 in Land Acquisition References No. 655, 656 and 657 of 1988 respectively, under which the learned Judge directed that the petitioners be awarded compensation in respect of the land acquired at Rs.15/- per sq. metre.

2. All the three appellants have preferred application for referring the matter to the District Court under Section 18 of the Act and the District Court entertained the said matters by consolidating those references and the matters have been disposed of by the third Joint District Judge by a common judgment. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common judgment.

3. The lands of the appellants bearing survey nos. 29, 14 and 28 respectively, admeasuring 5880, 3088 and 3088 sq. metres respectively, were acquired by the respondent by following due procedure laid down in the said Act. Notification under Section 4 was published in the Government Gazette on 27.9.1984 for acquisition of the said land for public purposes mentioned therein i.e. for constructing Undhai-Shobhasan road. Thereafter notification under Section 6 of the Act was published in Government Gazette dated 30.1.1986. Thereafter, formalities were completed and acquisition proceedings were initiated. The Special Land Acquisition Officer initiated proceedings for assessing compensation payable to the owners of the said property which was acquired as aforesaid. The matter was registered as Land Acquisition Case No.93/83 and after hearing the appellants, an award was passed by the Land Acquisition Officer on 4.7.1987 under which he was pleased to direct payment of compensation at Re.1/- per sq. metre as against the claim of the appellants at Rs.20/- per sq. metre. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the matters to the District Court for determination of appropriate compensation. Accordingly those cases were registered as L.A.R. Nos.655, 656 and 657 of 1998 respectively.

4. Notices were issued to the respondents. The

learned third Joint Judge, on over all appreciation of oral as well as documentary evidence produced by the parties, passed award granting compensation at Rs.15/- per sq. metre, as against the claim of Rs.20/- per sq. metre.

5. Feeling aggrieved by the aforesaid judgment and award passed by the learned Judge, the appellants have preferred these appeals before this Court. It has been contended here that the learned Joint District Judge has committed grave error in not awarding compensation at Rs.20/- per sq. metre. That the judgment and award are contrary to law, justice, equity and were against the evidence produced on record, and therefore, they are bad in law. That the learned trial Judge has not properly appreciated the fact that this Court had awarded compensation at Rs.18/- per sq. metre in respect of land of the adjoining village which was acquired for the said purpose, by judgment dated 30.6.1994 rendered in F.A. No.410 to 413 of 1994. That the trial court has not properly appreciated that the disputed land was permitted to be converted into Non-Agricultural use by the competent authority as per the order produced at Exh.15 and, therefore, the appellants were entitled to claim compensation at least at Rs.20/- per sq. metre. That the trial court has also failed in considering the fact that the neighbouring lands were sold at Rs.35/- per sq. metre in terms of sale deed Exhs. 21 and 22 as per agreement at Exh.18 in 1990. That the trial Judge has committed error in not properly appreciating the evidence produced before the trial court. That the learned trial Judge ought to have awarded compensation to the appellants at Rs.20/- per sq. metre. That on the whole, the judgment and award of the trial court are illegal and erroneous and deserve to be set aside. The appellants, therefore, pray that their appeals may be allowed and the judgment and award passed by the learned trial Judge in the aforesaid three Land Acquisition Cases be set aside and additional compensation at Rs.5/- per sq. metre be awarded to each of the appellants with solatium, interest and cost of the litigation.

6. Records and Proceedings were called for at the admission stage. We have heard the arguments advanced by the learned Advocate for the appellants and the learned G.P. with learned AGP for the respondents. We have also perused the Records and Proceedings and other papers on record.

It has been mainly contended by Mr A J Patel, learned Advocate for the appellants that though there was

evidence before the learned trial Judge, he did not consider the same for assessing the value of the property in dispute at Rs.20/- per sq. metre and instead, he assessed the same at Rs.15/- per sq. metre. That therefore, according to his argument, there was material irregularity on the part of the learned trial Judge in fixing value of the lands in dispute at Rs.15/- per sq. metre.

7. Learned Advocate for the appellants has relied upon the awards passed by the learned Extra ssstt.Judge, Mehsana in LAR Nos. 196 to 199 of 1986. There the notification under section 4 was issued on 31.7.1983 and the award was passed on 31.3.1986. The said matter went to the District Court and thereafter, the Government preferred First Appeals No.410 to 413 of 1994 and the respondents in that matter had filed cross-objections. It has been contended that the appeals of the Government were dismissed and the cross-objections were allowed and an additional amount at Rs.3/- per sq. metre was allowed as additional compensation by this Court by allowing cross-objections and dismissing the appeal of the State. Admittedly, the said matter was related to village Undhai. It has been argued that this village is adjoining to village Shahpur and the said property was acquired for constructing road between Undhai and Shobhasan. Learned Advocate for the appellant has also relied upon a certificate issued by the Talati-cum-Secretary, Shahpur Gram Panchayat stating that village Shahpur and Undhai are both adjoining to one another. On the strength of the said record, learned Advocate for the appellants strenuously argued before us that the lands of village Undhai are covered by the said judgment of this Court and the lands of village Shahpur which are the subject matter before this Court, are comparable and, therefore, the trial court ought to have assessed valuation of the property in question at least at Rs.18/- per sq. metre. That the trial court has not considered the same accordingly and, therefore, there is serious error on the part of the learned trial Judge. It is no doubt, true that if the lands are comparable, they can be treated at par for the purpose of assessing their value. Learned Advocate for the appellants has also submitted that there are numerous decisions of this Court as well as of the Hon'ble Apex Court to the effect that the Court should consider previous awards with respect to comparable lands. There cannot be any dispute that if the lands are comparable, previous awards can be looked into for the purpose of assessing value of the lands in respect of which reference is being conducted by the trial court. However, emphasis is always on the fact

that two lands in two different cases should be comparable. In the present case, we find that there is no material to show that the lands covered by the previous judgment of this Court referred to hereinabove and the lands which are the subject matter in this appeal are comparable. Firstly, they are situated in two different villages. Though the villages are adjoining to one another, it cannot be said that simply because the two villages are adjoining to one another, the lands situated in one village is comparable with the lands situated in the adjoining village. Sometimes, it so happens that an uncultivable waste-land has in its neighbourhood, a rich and fertile land. These two lands cannot be compared for the purpose of assessing their value. Simply because the waste-land is adjacent to the fertile land, one cannot say that the fertile land should carry value which may be carried by the waste-land. Same way, one also cannot say that the waste-land should fetch value which may be fetched by the fertile land. This means that each lands will have its own value and two lands would be comparable if they are equal in fertility.

8. There is no evidence on record to show that the two lands of two cases are comparable. In other words, it cannot be said that there is evidence on record to show that the lands which were the subject matter of the earlier matter referred to above and the lands which are the subject matter before us are equal in fertility. In absence of any material on record, it cannot be said that these two lands are comparable.

9. Learned Advocate for the appellants has taken us through the evidence on record in order to show that the appellants have deposed to the effect that the lands acquired are similar to the lands of adjoining village. That evidence has been challenged and there is no material on record to show that the two lands are similar for all purposes.

10. An important aspect of the case is that village Undhai appears to be little more developed than the development of village Shahpur. It is in evidence that certain facilities which are available in village Undhai are not available at village Shahpur. Schools and other facilities are admittedly available in village Undhai and those facilities are not available in village Shahpur. This also shows that though the two villages are adjoining to one another, they are not equal in all purposes.

19. On behalf of the appellant in FA

No.904/95-Shankarbhai Motibhai Patel, in Exh.14, has clearly deposed that there is a common primary as well as Secondary School for villages Shahpur and Undhai. That even the well is common in two villages. This shows that the primary and secondary schools are situated at village Undhai and same way, the well has been constructed at village Undhai. These facilities are not made available in Shahpur village. An attempt was made to show that these facilities are in between the two villages. However, the evidence cannot be read in that manner. In fact, these facilities are common for two villages and they are actually situated and made available to village Undhai and they are not within the boundaries of village Shahpur. As per the case of this witness, village Shahpur does not have a railway station, but the railway station is at Vadnagar which, according to the witness, is at a distance of 8 kms. from Shahpur.

20. There is no other evidence to show that the lands in two matters are comparable. It is not in evidence as to what crops were being taken by the land owners of village Undhai which was the subject matter of earlier litigation referred to above. Same way, there is no evidence to show as to what was the output in those lands per acre. There is also no evidence to show that the output in these two lands was comparable or equal. In that view of the matter, it cannot be said that the lands covered by the earlier decisions are comparable with the lands which are the subject matter of these appeals.

21. On the one hand, there is no evidence to show that the lands were covered by the earlier decisions are comparable with the lands which are the subject matter of these appeals. On the other hand, development of these two villages is also different. Under the circumstance, it cannot be said that the value of the land in the earlier decisions would be the value of the lands which are the subject matter of these appeals. In that view of the matter, it would, therefore, be natural that there would be some difference in the price of the land covered by the earlier decision of this Court and the lands which are the subject matter of these appeal. Learned Advocate for the appellants has relied upon the judgment rendered in FA No.410/94 in Special Land Acquisition Officer v. Heirs of deceased Hargovanbhai Patel. The judgment was pronounced in the aforesaid matter on 30.6.1994. The said decision relates to the lands situated at village Undhai which is said to be adjoining to village Shahpur where the lands in dispute before us are situated. We can find the reference relating to the crops income per vigha in that decision. Firstly, we do not have similar

evidence in the case before us and secondly, there is no evidence to show that the lands covered by the said decision and the lands in dispute before us are comparable. Unless there is comparable data on record, it is not possible to hold that the two lands are comparable. Moreover, even in the case of Kanwar Singh & Others v. Union of India, JT 1998 (7) SC 397, it has been laid down that while deciding the question whether previous award of one village can determine the market value of adjoining or other village. Generally, there will be different situation, potentiality of the lands situated in two different villages unless it is proved otherwise. Therefore, the appellants were required to show that the lands are comparable. Since there is no evidence to show the same, it would not be possible to consider the price of the lands of village of Undhai fixed in the aforesaid F.A. No.410/94.

22. Learned Advocate for the appellants has vehemently argued that the appellants have given evidence that the lands are comparable but that fact has been challenged during the cross-examination. There is no further material to show that the lands are comparable. Another difficulty in accepting the previous sale instance can be found from the principle laid down in the case of Special Deputy Collector v. Kurra Sambasiva Rao, AIR 1997 SC 2625. It has been laid down that unless such sale transaction or sale index are proved by examining witnesses, i.e. vendor or vendee or scribe, no reliance can be placed on those documents for determination of market value of the acquired lands. Naturally, this principle laid down in the aforesaid case will apply to the earlier awards on which reliance is placed to determine the market value of the acquired lands. Unless evidence is led to show the similarity between the acquired lands in appeal and the acquired lands of earlier awards, the earlier awards cannot be blindly followed. Therefore, in the present case also we find that the appellants have not examined the seller or purchaser or the scribe of earlier instance and, therefore, those sale instances cannot be relied upon for the purpose of determining the price of the lands in dispute before us. Then, it is also to be considered that the sale deeds produced at Exhs. 21, 22 are dated 18.12.1980. There, the lands sold were 167 sq.meters and 155 sq. metres respectively. They were sold at the rate of Rs. 35/- and Rs. 38/- per sq. metre respectively. It is to be seen that the area covered by those sale deeds was very negligible i.e. 167/- sq. metre and 155/- sq. metre only. On the other hand, the area of each lands under dispute before us is 5880, 3088 and 3088

sq. metre respectively. Therefore, it is very clear that the sale instances at Exhs.21 and 22 stand for small pieces of lands whereas the lands acquired and which are in dispute before us have really large area. This is also material consideration for not relying upon the sale instances at Exh.21 and 22.

23. On the one hand, the purchaser, seller or scribe have not been examined on the other hand the lands are not shown to be comparable. Then the previous sale transactions Exhs.21 and 22 which stand for small area of lands and this would fetch more price compared to the lands in dispute before us. Similar is the case with respect to earlier awards, awarded in FA No.410 to 413 of 1994 referred to hereinabove. The fact remains that village Undhai appears to be more developed one than the village Shahpur. Since certain facilities are available at village Undhai and they are not available in Village Shahpur. In the aforesaid circumstances, it cannot be said that the Reference Court has committed error in fixing the price of the lands acquired at Rs. 15/- per sq. metre. These two villages are not comparable and when the lands are not proved to be comparable, there would be some difference in the matter of price between the lands situated in a developed village and the lands situated in under-developed village. The margin is not so high so as to call for interference of this Court in appeal. It cannot be said that the Reference Court has committed serious error in fixing the price of the lands acquired at Rs.15/- per sq. metre instead of Rs.20/- per sq. metre. In the aforesaid circumstances, it has to be held that though the scribe, vendor or purchaser were not examined and though the evidence to show that the lands are comparable has not been brought on record, the trial court has still considered those aspects and has enhanced the prices of the lands acquired from Rs.1/- to Rs. 15/per sq. metre. Since the State Government has not preferred appeal, we are not here to express any opinion on the point as to whether or not the price fixed by the trial court in respect of the acquired land is on higher side, but it is very clear that while enhancing the price from Rs.1/- per sq. metre to Rs.15/- per sq. metre, the Reference Court has considered the earlier awards and earlier transactions which could be ignored in view of the aforesaid position. Under the circumstances, even if there is error on the part of the Reference Court, it is in favour of the appellants and not against them. Suffice it to say that the records do not lead us to infer that the Reference Court has committed error in fixing the price of the lands acquired at Rs.15/- per sq. metre. We also find that there is no material available

to us in order to hold that the price of the lands acquired should be fixed at Rs.20/- per sq. metre. Therefore, there is no error on the part of the Reference Court and consequently, the appeals are without any merit and they deserve to be dismissed.

24. In the aforesaid view of the matter, all the three appeals are ordered to be dismissed with costs of the respondent. The appellants shall bear their own costs.

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msp.